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FISCAL IMPACT REPORT

SPONSOR SFI DATE TYPED 3/16/05 HB _____

SHORT TITLE Recycling and Illegal Dumping Act SB 142/SFIS

ANALYST Hadwiger

APPROPRIATION (in \$000s)

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			(\$800.0)	Recurring	Tire Recycling Fund
			\$800.0	Recurring	Recycling and Illegal Dumping Fund

(Parenthesis () Indicate Expenditure Decreases)

Similar to HB269.

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	(\$800.0)	(\$800.0)	Recurring	Tire Recycling Fund
	\$800.0	\$800.0	Recurring	Recycling and Illegal Dumping Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (AG)

Department of Environment (DE)

Corrections Department (CD)

Department of Transportation (DOT)

Public Defender Department (PDD)

No comments were received from the Department of Finance and Administration, New Mexico Association of Counties or New Mexico Municipal League at the time this FIR was written.

SUMMARY

Synopsis of Senate Floor Substitute for SB142

The original bill would have enacted the Recycling and Illegal Dumping Act and repeal the Tire Recycling Act (Sections 74-11-1 to 74-11-17 NMSA 1978). In particular, the bill would make the following changes to existing statute:

1. Creates the Recycling and Illegal Dumping Alliance, including one member from each state government, local government, a solid waste authority, industry waste generator, tribal government, nonprofit organization, recycling company, retailer, agricultural producer, waste management company, and the public at large. The members would serve two-year terms with no compensation from the state. The Alliance would:
 - a. Develop strategies to increase recycling and decrease illegal dumping in New Mexico.
 - b. Create a state recycling plan and update the plan every three years to measure progress and modify strategies.
 - c. Review and make recommendations for funding grant applications from the recycling and illegal dumping fund.
2. Prohibits storing or using in a civil engineering application, except for agricultural uses, more than 100 scrap tires without a valid permit from the New Mexico Department of Environment (NMED).
3. Prohibits operating or maintaining a tire recycling facility without a valid permit, unless the facility stores/uses tires for agricultural uses.
4. Prohibits transport of scrap tires for hire without required registration, as well as to a place other than a tire recycling facility, with specified exceptions.
5. Prohibits a scrap tire generator from releasing scrap tires to a person other than a registered scrap tire hauler or registered commercial waste hauler.
6. Prohibits open burning of scrap tires.
7. Prohibits storage or disposal of scrap tires or tire-derived products in a manner that creates a public nuisance, promotes disease vectors, creates the potential for fire or other health or environmental hazards.
8. Except for agricultural uses as specified, prohibits storing scrap tires or tire-derived products for more than 12 months unless authorized by the NMED cabinet secretary.
9. Prohibits scrap tire haulers from transporting scrap tires without a scrap tire manifest approved by NMED.
10. Prohibits engaging in, maintaining or allowing illegal dumping.
11. Allows the NMED secretary or his/her representative to:
 - a. Enter a facility of a scrap tire generator, scrap tire hauler, or tire recycling facility at any reasonable time to make a routine inspection or investigation of scrap tire management practices based on reasonable evidence of a violation of this Act.
 - b. Take and analyze samples of the facility's waste, soil, air or water to detect contaminants.
 - c. Conduct monitoring or testing of equipment, contents or surrounding soil, air, surface water or ground water at the facility.
 - d. Conduct facility inspections of scrap tire haulers at weigh stations or other sites.
12. Sets rules regarding confidentiality of records obtained in inspections, including criminal penalties for failure to protect the confidentiality of the records.
13. Makes NMED responsible for implementing the Act.

14. Adds to the list of rules that shall be adopted by the Environmental Improvement Board with respect to tire recycling:
 - a. Record keeping requirements for tire recycling facilities, scrap tire haulers, and scrap tire generators
 - b. Financial assurance criteria for tire recycling facilities
 - c. Fire rules for storage of scrap tires and tire-derived products that are consistent with those adopted by the State Fire Marshall.
 - d. Requirements and procedures for a scrap tire manifest system
 - e. Criteria and procedures for making disbursements under the grant and loan programs.
 - f. A fee schedule applicable to scrap tire haulers and tire recycling facilities no to exceed the estimated cost of investigating and issuing permits and registrations and conducting regulatory oversight
 - g. A fee schedule applicable to scrap tire generators not exceeding the estimated cost of conducting regulatory oversight.
15. Requires scrap tire generators who transport scrap tires for specified purposes to complete a scrap tire manifest and to show such manifest when a load is being transported upon demand to an officer of the Motor Transportation Division of the Department of Public Safety, New Mexico state police, a local law enforcement officer, or the NMED secretary or his/her designee.
16. Allows the NMED secretary to issue a compliance order or commence a civil action in district court to enforce against persons who violate the Act.
17. Increases the potential penalty assessed in a compliance order from \$2,500.00 per day to \$5,000.00 per day of noncompliance with each violation.
18. Requires reasonable specificity in compliance orders with regard to the nature of the corrective action to be taken and time for compliance.
19. Allows appeals up to 30 days after a compliance order is issued (compared to 15 days under current statute). Provides for an independent hearing officer and public hearing to hear appeals and provides for other aspects of the appeal process.
20. Allows local government authorities to issue field citations for minor violations, with civil penalties not to exceed \$1,000.00 per day of violation and provides for appeal of the field citations.
21. Provides for judicial review of administrative actions under the Act.
22. Establishes criminal penalties for violations of Section 4 of the Act, including:
 - a. If the violation involves a quantity of scrap tires is less than 5,000 pounds, a misdemeanor
 - b. If the violation involves a quantity of scrap tires that is 5,000 pounds or greater, a fourth degree felony.
 - c. Persons who knowingly omit substantive information or make false statements would be guilty of a fourth degree felony.
23. Expands eligibility for grants under this Act to include Indian nations, pueblos, tribes, land grant communities and solid waste authorities.
24. Sets eligible expenditures of grants under this Act to include providing funds to public landfills to offset the cost of collecting or recycling tires.
25. Sets eligible expenditures for loans or contracts to include development or operating costs to establish a recycling facility, purchasing equipment, marketing, purchasing products produced by a recycling facility, providing educational outreach, developing recycling infrastructure, abating illegal dumpsites, and contracting with vendors to promote recycling and to abate illegal dumpsites.

26. Recipients of grants, contracts or loans would be restricted to persons who receive 95% or more of recyclable materials from sources in New Mexico.
27. Requires that at least 2/3 of budgeted grant money in each fiscal year be allocated to tire abatement and recycling and the remaining 1/3 be allocated to abatement of illegal dumping and recycling of other solid wastes.
28. Creates a Recycling and Illegal Dumping Fund to replace the existing Tire Recycling Fund. Expenditures from the Tire Recycling Fund were limited to abatement of illegal dumpsites for reprocessing, transportation or recycling of all recyclable materials and scrap tires, for providing funds to public landfills to offset the cost of collecting or recycling tires, and for carrying out the provisions of the Tire Recycling Act.
29. Specifies that regulations enacted pursuant to the Tire Recycling Act would continue in force until amended or repealed. Repeal of that act would not affect prior violations and permits and registrations issued pursuant to that act would remain in effect until they expire, are suspended, revoked or otherwise modified.

Significant Issues

According to NMED, SB142 supports one of three recommendations stemming from the *Strategic Plan to Transform the Economics of Recycling* which was prepared in response to a 2004 House Joint Memorial. Significant issues include the expanded focus on all recycling, thereby providing improved infrastructure for recycling and providing for the abatement of illegal dumpsites in New Mexico. SB142 provides the beginning of a strategic and coordinated approach to resource protection and conservation through improved recycling and the abatement of illegal dumpsites.

According to the Office of the Attorney General, SB142 provides that all records obtained by NMED pursuant to the Recycling Act are public unless deemed confidential by NMED pursuant to the provisions of USCA Section 1905. As drafted it is unclear whether SB142 wishes to adopt the provisions of 18 USCA Section 1905 and make it a criminal offense under state law to disclose confidential information. As drafted 18 USCA Section 1905 would not be applicable at this is federal law and only applies to the disclosure of confidential information by officers or employees of the United States government.

NMED indicated that most of the changes to the original bill that are incorporated into the substitute were made at the request of the agricultural industry. The change regarding legal fees was incorporated to discourage the state from pursuing an unreasonable or frivolous lawsuit.

FISCAL IMPLICATIONS

Continuing Appropriations

This bill creates a new fund, the Recycling and Illegal Dumping Fund to replace the existing Tire Recycling Fund, and provides for continuing appropriations. The LFC is concerned about including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

ADMINISTRATIVE IMPLICATIONS

NMED anticipates SB142 could be administered within the existing structure and staff of the

agency.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB142 is similar to HB269. Both bills have been substituted and amended extensively.

ALTERNATIVES

PDD suggested the substitute could be modified to restrict the third degree penalty to violators who dispose of more than 5000 pounds. The other possibility would be to create a petty misdemeanor amount, i.e. 25 – 1000 pounds, a misdemeanor amount of 1001 – 5000 pounds, and a felony amount of over 5000 pounds. Each of these could graduate to the next higher offense if there is a subsequent conviction.

OTHER SUBSTANTIVE ISSUES

The Corrections Department does not anticipate a significant impact on the number of people incarcerated from the penalties included in this bill.

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